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ATTORNEYS AT LAW

November 20, 2002

EX PARTE – Via Electronic Filing

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

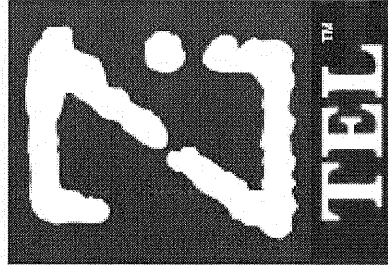
On November 19, Rob Curtis and George Ford of Z-Tel and I met with Chris Libertelli, the Chairman's Legal Advisor for wireline competition matters. We distributed and discussed the attached documents at these meetings, focusing particularly on the slide entitled "State Commissions Must Play A Role."

In accordance with FCC rules, a copy of this letter is being filed in the above-captioned dockets.

Sincerely,

/s/

Christopher J. Wright
Counsel to Z-Tel Communications, Inc.



Z-Tel and UNE-P Applications

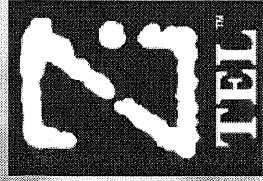
Robert Curtis

George S. Ford

Thomas M. Koutsky

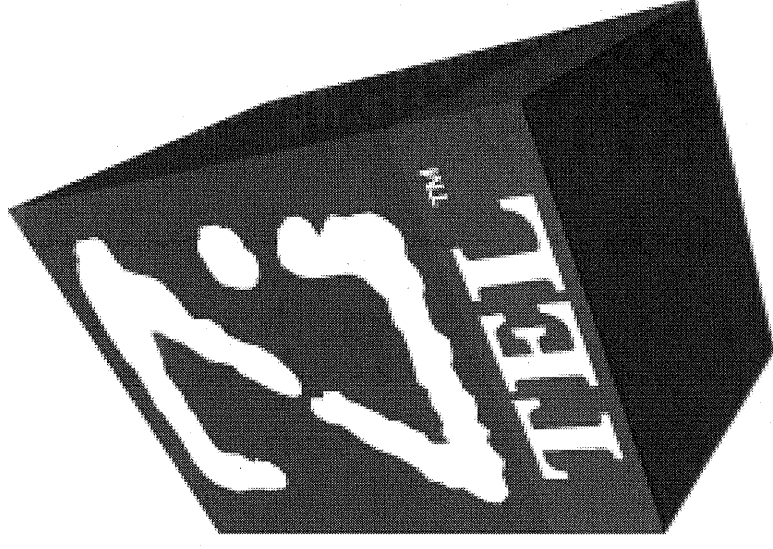
Z-Tel Communications, Inc

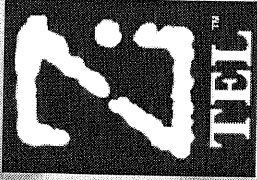
November 19, 2002



Z-Tel: Quick Facts

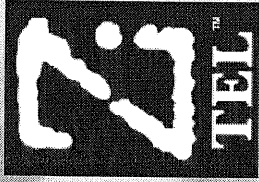
- ▶ Leading UNE-P-based services provider headquartered in Tampa, Florida
- ▶ 925 Employees with \$41K annual average salary
- ▶ **200,000 current retail residential and small business lines in service in 46 states**
- ▶ **We own facilities and develop services -- and we utilize UNE-P to connect mass-market customers in 46 states to them**
- ▶ Key partner behind The Neighborhood™ built by MCI
- ▶ Founded in 1998 & public since December 1999
- ▶ \$250MM annual revenue
- ▶ EBITDA positive w/ minimal debt
- ▶ **Innovation:** unique Internet-accessible calling and messaging features
- ▶ **The Future:** voice recognition dialing, personal and organizational directories





Agenda

- Unbundled switching, UNE-P and Sections 251(d), 271
- Granular Examination: ULS/UNE-P for the Mass Market
- UNE-P to Facilities “migration”
- Role of the States



Impairment Analysis

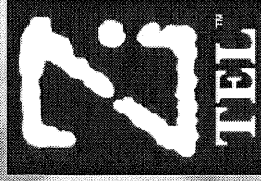
- Bell company emphasis on financial harm from UNE-P proves impairment
 - Bells argue that without UNE-P, they would be financially stronger
 - In other words, CLECs cannot sign customers up as fact without UNE-P

- ULS issue **not** about availability of switches
 - Issues is whether switches are **usable**
 - Can't rely on "switches on eBay" argument – FCC could not unbundle loops either



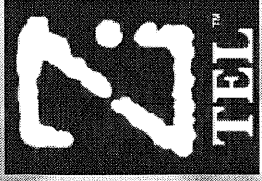
Mandated Vertical Integration

- Forcing CLECs to purchase sunk-cost switches means...
 - Limiting number of entrants by definition
 - Mandating vertical integration of network and services
 - Reducing innovation and growth
- Telecom needs to become more like other industries
 - Should Dell be required to make microprocessors to be in the PC market?
 - Should Intel be required to write end-user software to be in the microprocessor chip business?
 - Should Microsoft be required to build PCs to be in the software business?
 - Are these companies “parasites”? Do they not add value?



Section 271 Requires the Bells to Provide UNE-P

- Regardless of the results of the impairment analysis, the BOCs must provide access to the network elements comprising the platform
 - The section 271 checklist specifically requires BOCs to unbundle loops, switching, and transport
 - The legislative history says the checklist sets forth what a BOC must provide “at a minimum ... in any interconnection agreement approved under section 251”
 - The FCC previously concluded that BOCs must provide access to unbundled switching even in circumstances where it need not be offered under section 251
- Verizon recognizes section 271 means what it says by filing a forbearance petition
 - But the record in that separate proceeding shows that sections 251(c)(3) and 271 have not been “fully implemented” and won’t be until wholesale markets exist.
- FCC erroneously concluded that BOCs need not provide network elements at cost-based rates. Congress...
 - Used the term “unbundled” in checklist items (iv), (v) and (vi)
 - Intended the pricing rule it established for network elements to be applied.



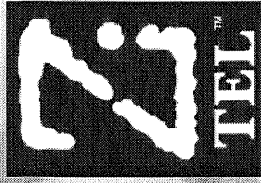
Mass Market Granular Analysis

USTA and CompTel decisions require granular, market-specific and carrier-specific analysis...

- Z-Tel seeks to provide its innovative telecom software to mass market residential and small business customers (DSOs)

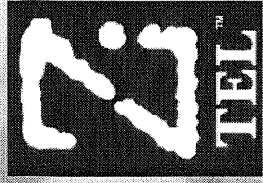
- “Mass market” distinct from “large business market”

- *Distinction made in FCC Merger Orders (BA/GTE, SBC/Ameritech)*
- *Verizon admits unbundling analysis for “traditional wireline” must be different than for large business/broadband*
- *Requirements to Serve of Mass Market Unique*
 - *Very High Churn (MCI 11/15/02 ex parte) – several % per month*
 - *No long-term contracts*
 - *High quality – no tolerance for failures*
 - *Low revenue/month*



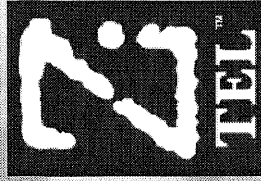
Hot Cuts: the record...

- Barrier to Entry: ILECs have mechanized way of providing mass-market service to customers. Denying CLECs mechanized access and requiring manual processes erects classic barrier to entry
- This Barrier to entry qualifies under *USTA* -- as it stems from ILEC's monopoly
- Manual hot-cuts insufficient to handle scale, quality, and efficiency of mechanized process
- Bell company hot-cut "proposals" inadequate
 - Verizon has only proposed to deploy an automated electronic tracking system -- *underlying provisioning system still manual*
 - SBC offers 1 million hot cuts per year in Ameritech territory -- *this would cap CLEC mass-market share at less than 8%!*
 - BellSouth has proposed a "trial"



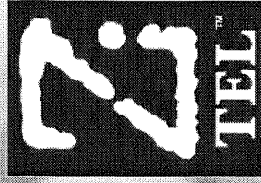
UNE-P as Rural Entry Method

State	Urban UNE-P Lines	Suburban UNE-P Lines	Rural UNE-P Lines
Michigan	140,675	309,067	374,818
Illinois	12,562	181,991	331,813
Texas	447,076	678,015	284,506
Ohio	69,433	79,846	129,387
Indiana	18,794	22,510	19,772
Wisconsin	12,436	37,361	14,995
Missouri	92,130	32,195	13,770
Oklahoma	51,154	7,383	5,396
Kansas	91,698	47,899	5,391
California	132,200	146,083	5,371
Arkansas	10,314	38,370	1,549
Nevada	31	20	1
Total SBC 3,851,022	1,078,503	1,580,740	1,186,719



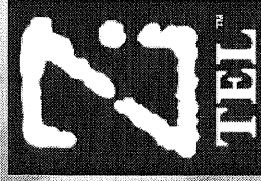
UNE-P Residential Entry

State	Urban Res/UNE-P Lines	Suburban Res/UNE-P Lines	Rural Res/UNE-P Lines
Michigan	123,036	253,530	319,249
Illinois	4,893	144,243	269,753
Texas	328,552	476,833	210,445
Ohio	55,700	62,433	108,754
Indiana	17,553	17,657	16,479
Wisconsin	10,778	31,447	11,538
Missouri	27,536	14,222	8,944
Oklahoma	17,656	3,742	1,205
Kansas	53,056	29,080	2,757
California	75,384	93,721	2,792
Arkansas	8,581	34,807	1,454
Nevada	18	20	1
Total SBC 2,840,184	722,743	732,585	953,371



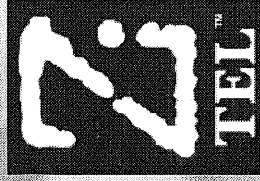
UNE-P...The Future

- Consumers only now beginning to see choice – 8MM UNE-P lines to date
- New and innovative service providers like Z-Tel account for 43% of all UNE-P lines
- Consumers don't demand network facilities – service providers do. Independent UNE-P carriers serving mass market demand *and will migrate* to independent, non-ILEC sources when those non-ILEC sources can provide seamless access in sufficient quantities
- The solution is to **develop wholesale, non-ILEC alternatives** – presence of Z-Tel and companies like us **facilitate** that development



Z-Tel Research on UNE-P

- ***Residential/Small Business Competitive Entry greater where UNE Platform available without restriction***
 - Z-Tel Policy Paper No. 3
 - Data: FCC Local Competition Reports
- ***UNE-P promotes facilities investment***
 - Z-Tel Policy Paper No. 4
 - Data: looks at switch deployment over time, using FCC Local Competition data, LERG
- ***Bells make money selling UNE-P to Z-Tel***
 - September 23 and 30, 2002 Z-Tel ex parte letters to Chairman Powell
 - Beard & Klein, Phoenix Center Policy Paper No. 17
 - SBC CFO confirms that in Texas – ***where UNE-P has been and is now available without restriction*** – SBC has sufficient incentive to invest at \$20/21 per month



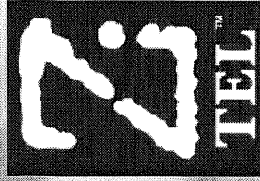
More Research...

Lower UNE prices do not “discourage” facilities-based entry

- Beard, Ford and Koutsky, *Facilities-Based Entry into Local Telecommunications* (2002) (attached to Z-Tel Comments)
 - Study also supports findings of Policy Paper No. 4
 - Data: FCC Local Competition data, LERG, state UNE prices
 - Study entirely un rebutted the record
- Pelkovits and Ford, *Unbundling and Facilities-Based Entry by CLECs* (2002)
 - Data: ARMIS, FCC Form 477 data (latest available data)

Unbundling and “facilities-based” entry are not substitutes

- Beard and Ford, *Make or Buy? Unbundled Elements as Substitutes for Competitive Facilities* (2002)
 - Data: UNE-P Fact Report, FCC Form 477 data and UNE pricing data
 - Estimated demand curves for unbundled loops purchased with switching (UNE-P) and without switching (UNE-L)
 - Comparing elasticity of these curves indicates whether CLECs view UNE-P and UNE-L as substitute forms of entry, or whether they are different forms of entry to serve different markets
- Results: **UNE-P and UNE-L are not substitute entry strategies**
- In other words, taking away UNE-P will not increase UNE-L competition – indeed, forced migration to UNE-L risks unserving the market UNE-P currently supports



State Commissions Must Play a Role

Section 251(d)(2)

- The *USTA* and *CompTel* decisions: Section 251(d)(2) requires granular analyses beyond the capabilities of the FCC.
 - *USTA*: FCC erred by adopting rules of “unvarying scope” that were “detached from any specific markets or market categories.”
 - *CompTel*: Section 251(d)(2) “invite[s] an inquiry that is specific to particular carriers and services.”
- States can **help** FCC write rules that pass legal muster by doing fact-finding to determine whether impairments continue to exist – with particular focus upon whether reduction in output would occur in their states
 - Discovery
 - Cross-examination
 - States that have done this to date have found the UNEP access is warranted to serve the mass market (see Texas)
 - **Current evidence insufficient to rebut those state findings**

Section 251(d)(3)

- Regardless of the section 251(d)(2) analysis, Congress preserved the states’ right to establish additional unbundling obligations.
- *Iowa Utilities Board*: In a portion of its opinion that was not overturned, the Eighth Circuit held that the FCC could not preempt state unbundling rules merely because they differ from FCC rules.